

United States District Court
Eastern District of California

Benny Dean Bartee, Sr.,

Plaintiff,

vs.

Stephen Kennedy, et al.,

Defendants.

No. Civ. S 04-0965 DFL PAN P

Findings and Recommendations

-oOo-

Plaintiff is a state prisoner without counsel prosecuting a civil rights action. He claims defendants violated his constitutional rights in connection with a guilty plea resulting in a prison sentence he now is serving. He has not invalidated his conviction by habeas corpus or other means.

March 16, 2005, the court ordered plaintiff to either file a petition for habeas corpus or show cause why this action is not barred by Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff did not respond.

1 Plaintiff cannot proceed under the civil rights statute for
2 reasons explained in the March 16, 2005, order.

3 Accordingly, the court hereby recommends this action be
4 dismissed.

5 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these
6 findings and recommendations are submitted to the United States
7 District Judge assigned to this case. Written objections may be
8 filed within 20 days of service of these findings and
9 recommendations. The document should be captioned "Objections to
10 Magistrate Judge's Findings and Recommendations." The district
11 judge may accept, reject, or modify these findings and
12 recommendations in whole or in part.

13 Dated: May 31, 2005.

14 /s/ Peter A. Nowinski

15 PETER A. NOWINSKI

16 Magistrate Judge
17
18
19
20
21
22
23
24
25
26